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SENATE BILL 174

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

John T. L. Grubesi c

AN ACT

RELATING TO HUMAN RIGHTS; EXTENDING THE TIME LIMIT FOR FILING
APPEALS AND GRIEVANCES UNDER THE HUMAN RIGHTS ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 28-1-10 NMSA 1978 (being Laws 1969,
Chapter 196, Section 9, as amended) is amended to read:

"28-1-10. GRIEVANCE PROCEDURE. --

A. [~~Any~~] A person claiming to be aggrieved by an
unlawful discriminatory practice and [~~any~~] a member of the
commission who has reason to believe that discrimination has
occurred may file with the human rights division of the labor
department a written complaint that shall state the name and
address of the person alleged to have engaged in the
discriminatory practice, all information relating to the
discriminatory practice and any other information that may be

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1 required by the commission. All complaints shall be filed with
2 the division within [~~one hundred eighty~~] three hundred days
3 after the alleged act was committed.

4 B. The director shall advise the respondent that a
5 complaint has been filed against [~~him~~] the respondent and shall
6 furnish [~~him~~] the respondent with a copy of the complaint. The
7 director shall promptly investigate the alleged act. If the
8 director determines that the complaint lacks probable cause,
9 [~~he~~] the director shall dismiss the complaint and notify the
10 complainant and respondent of the dismissal. The complaint
11 shall be dismissed subject to appeal as in the case of other
12 orders of the commission.

13 C. If the director determines that probable cause
14 exists for the complaint, [~~he~~] the director shall attempt to
15 achieve a satisfactory adjustment of the complaint through
16 persuasion and conciliation. The director and staff shall
17 neither disclose what has transpired during the attempted
18 conciliation nor divulge information obtained during any
19 hearing before the commission or a commissioner prior to final
20 action relating to the complaint. [~~Any~~] An officer or employe
21 of the labor department who makes public in any manner
22 [~~whatever any~~] information in violation of this subsection is
23 guilty of a misdemeanor and upon conviction shall be fined not
24 more than one thousand dollars (\$1,000) or imprisoned not more
25 than one year.

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1 D. ~~[Any]~~ A person who has filed a complaint with
2 the human rights division may request and shall receive an
3 order of nondetermination from the director [~~one hundred eighty~~
4 ~~days~~] without delay after the division's receipt of the
5 complaint. The order of nondetermination may be appealed
6 pursuant to the provisions of Section 28-1-13 NMSA 1978.

7 E. In the case of a complaint filed by or on behalf
8 of a person who has an urgent medical condition and has
9 notified the director in writing of the test results, the
10 director shall make the determination whether probable cause
11 exists for the complaint and shall attempt any conciliation
12 efforts within ninety days of the filing of the written
13 complaint or notification, whichever occurs last.

14 F. If conciliation fails or if, in the opinion of
15 the director, informal conference cannot result in conciliation
16 and the complainant has not requested a waiver of right to
17 hearing pursuant to the provisions of Subsection J of this
18 section, the commission shall issue a written complaint in its
19 own name against the respondent, except that in the case of a
20 complaint filed by or on behalf of a person who has an urgent
21 medical condition, who has notified the director in writing of
22 the test results and who so elects, the director shall issue an
23 order of nondetermination, which may be appealed pursuant to
24 the provisions of Section 28-1-13 NMSA 1978. The complaint
25 shall set forth the alleged discriminatory practice, the

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1 secretary's regulation or the section of the Human Rights Act
2 alleged to have been violated and the relief requested. The
3 complaint shall require the respondent to answer the
4 allegations of the complaint at a hearing before the commission
5 or hearing officer and shall specify the date, time and place
6 of the hearing. The hearing date shall not be more than
7 fifteen or less than ten days after service of the complaint.
8 The complaint shall be served on the respondent personally or
9 by registered mail, return receipt requested. The hearing
10 shall be held in the county where the respondent is doing
11 business or the alleged discriminatory practice occurred.

12 G. Within one year of the filing of a complaint by
13 a person aggrieved, the commission or its director shall:

14 (1) dismiss the complaint for lack of probable
15 cause;

16 (2) achieve satisfactory adjustment of the
17 complaint as evidenced by order of the commission; or

18 (3) file a formal complaint on behalf of the
19 commission.

20 H. Upon the commission's petition, the district
21 court of the county where the respondent is doing business or
22 the alleged discriminatory practice occurred may grant
23 injunctive relief pending hearing by the commission or pending
24 judicial review of an order of the commission so as to preserve
25 the status quo or to ensure that the commission's order as

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1 issued will be effective. The commission shall not be required
2 to post a bond.

3 I. For purposes of this section, "urgent medical
4 condition" means any medical condition as defined by an
5 appropriate medical authority through documentation or by
6 direct witness of a clearly visible disablement [~~and which~~
7 that poses a serious threat to the life of the person with the
8 medical condition.

9 J. The complainant may seek a trial de novo in the
10 district court in lieu of a hearing before the commission,
11 provided the complainant requests from the director, in
12 writing, a waiver of complainant's right to hearing within
13 sixty days of service of written notice of a probable cause
14 determination by the director. The director shall approve the
15 waiver request and shall serve notice of the waiver upon the
16 complainant and respondent. The complainant may request a
17 trial de novo pursuant to Section 28-1-13 NMSA 1978 within
18 [~~thirty~~] ninety days from the date of service of the waiver.
19 Issuance of the notice shall be deemed a final order of the
20 commission for the purpose of appeal pursuant to Section
21 28-1-13 NMSA 1978. "

22 Section 2. Section 28-1-13 NMSA 1978 (being Laws 1969,
23 Chapter 196, Section 12, as amended) is amended to read:

24 "28-1-13. APPEAL. --

25 A. [~~Any~~] A person aggrieved by an order of the

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1 commission may obtain a trial de novo in the district court of
2 the county where the discriminatory practice occurred or where
3 the respondent does business by filing a notice of appeal
4 within [~~thirty~~] ninety days from the date of service of the
5 commission's order. A copy of the notice of appeal shall be
6 served personally or by certified mail, return receipt
7 requested, at their last known address on all parties who
8 appeared before the commission and shall also be served at the
9 division office in Santa Fe. [~~No~~] An order of the commission
10 shall not be superseded or stayed during the appeal unless the
11 district court so directs after notice to the commission and a
12 hearing.

13 B. If testimony at the hearing was transcribed, the
14 division shall, upon receipt of the notice of appeal, file so
15 much of the transcript of the record as the parties requesting
16 the transcript designate as necessary for the appeal with the
17 district court.

18 C. Upon appeal, either party may request a jury.
19 The jurisdiction of the district court is exclusive and its
20 judgment is final, subject to further appeal to the supreme
21 court.

22 D. In any action or proceeding under this section,
23 if the complainant prevails, the court in its discretion may
24 allow actual damages and reasonable [~~attorney's~~] attorney fees
25 and the state shall be liable the same as a private person."

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